



officer further concluded that Ansah had fraudulently misrepresented himself to the DMV, following a hearing held on March 26, 2010.

## **I. Facts**

On February 1, 2010, the DMV sent correspondence<sup>4</sup> to Appellant notifying Appellant that his driver's license would be suspended for one (1) year because the DMV had reason to believe that Appellant may have fraudulently obtained one or more driver's licenses/identification cards.

Appellant then requested that a hearing be held in regard to the matter.<sup>5</sup> A fraud hearing was held on March 26, 2010. The scope of the hearing covered whether the DMV had cause to believe that Appellant misrepresented his identity by presenting fraudulent documents; using a fictitious/false name; making a false statement; concealing a material fact and/or otherwise committing fraud, specifically whether Appellant presented at the DMV fraudulent documents in order to obtain either an identification card or a driver's license.

---

<sup>4</sup> The letter dated February 1, 2010 from the State of Delaware Department of Transportation Division of Motor Vehicles addressed to Mr. Gabriel Owusu Ansah at 812 Hasting Ct., Glasgow Pines, Newark, DE 19702 states: "The Division of Motor Vehicles (DMV) has reviewed its digital photograph database. The purpose of this review was to eliminate or adjust for any errors that have occurred during past driver license or identification card (DL/ID) transactions. The review also provided an indication that certain DLs/IDs may have been obtained fraudulently. A recent review of your record indicated that more than one Delaware DL/ID is assigned to you, and as a result of further investigation, the division has reason to believe that you may have fraudulently obtained one or more DLs/IDs. Delaware law states " . . . a person shall not fraudulently obtain or attempt to obtain a drivers license or an identification card by misrepresentation", and for those that do, DMV has the right to suspend an individual's driver license and/or identification card for one year. Accordingly, your driver license and/or identification card will be suspended for one year effective February 17, 2010. If you wish to contest the suspension of your driver license and/or identification card, you may submit a written request for an administrative hearing no later than February 16, 2010. If a written request for a hearing is filed by the above mentioned date, the suspension shall not become effective unless the final decision of the hearing officer results in a decision ruled against you. Hearing requests shall be mailed to: Delaware Division of Motor Vehicles, ATTN: Driver Improvement Section, P.O. Box 698, Dover, DE 19903-0698. If you have any questions or concerns, please call Ken Shock at 302-744-2544. Sincerely, Chief of Driver Services, Division of Motor Vehicles."

<sup>5</sup> A handwritten notation on the correspondence sent to Appellant from the DMV dated February 1, 2010 states "Responded [sic]: 02/08/2010"; Correspondence from Appellant to the DMV dated February 4, 2010 states "Appeal to Contest. This letter is in response to your mail dated 02/01/2010 to me. I have not obtain my driver license or identification card fraudulently. I will explain to you what happened if you need any further inquiry or information please do not hesitate to call me at 302-299-7425. Thank you. As a commercial driver's instructor I went to the Wilmington DMV at 2230 Hessler Blvd, New Castle, DE to assist my student in a road test. After the test the DMV examiner, or personnel could not find my license. He looked for hours but did not find it. Therefore the supervisor or the "HEAD" personnel issued me another one. As of now I only have ONE license. I do not have two, ONLY ONE. The other one was never find again. Therefore your letter to me is surprise and please correct your database information. Thank you. Gabriel O. Ansah, 812 Harding Ct., Newark, DE 19702, 302-299-7425 (cell)"

At the hearing, Ms. Karen Anderson (hereinafter “Anderson”), an investigator for the DMV, represented the DMV and presented the DMV’s position regarding the fraud case involving Appellant. Anderson testified that in early 2009, the DMV purchased a facial recognition software program that makes a digitized image template of a person’s face. The template is then sent through the entire photo database of the DMV and compares the template with the images in the photo database. Anderson further testified that the program also compares the demographic information, such as the name, date of birth and social security number with the images. The program detects the template and photo image in two ways.

First, the program looks at the template and matches all of the images in the photo database with the template. The program also looks to see if the demographic information is the same. If the program detects that the images are the same but that demographic information is different, the program reports this situation as possible fraud in what is called the duplicate analyzer.

Second, the programs looks at the template and matches the images in the photo database as well as looks at the demographic information and reports any images that are different from the template that have the same demographic information. Anderson testified that this process is reported as possible fraud in what is called the ID verifier.

Anderson further indicated that the entire DMV photo database was reviewed by the program and 10,000 images came up as possible fraud. A specially trained staff member is then required to review each possible fraud case to determine if it was a fraud case or an error. Since the program’s inception, a review of possible fraud cases has led the DMV to identify 1,300 cases as fraud. Anderson testified that according to Delaware law, Title 21, Section 2751(a) and (b), a person shall not fraudulently obtain or attempt to obtain a driver’s license or identification card by misrepresentation. The penalty for a violation of the above statute is the right of the DMV to suspend an individual’s driver’s license for one (1) year.

Anderson testified that based upon an investigation, the following information and documents were discovered that indicated to the DMV that Appellant fraudulently obtained a driver's license.

Anderson then submitted information and documents<sup>6</sup> the DMV discovered that indicated to the DMV that Appellant fraudulently obtained a driver's license in the name of Papa Yaw Wusu (hereinafter "Wusu"). Anderson presented photographs that were matched through the DMV's facial recognition software. Anderson further submitted into evidence images that are in the DMV system, one picture of Wusu and three pictures of Appellant with the noted differences that came up in the DMV's system.

Anderson submitted into evidence color photos and testified that it is the State's position that all three individuals are the same person. Anderson explained the remaining documents contained within Exhibit A. She testified that page two was the pictures that the DMV labeled depicting Appellant and Wusu. Further, pages three and nine depicted the side-by-side measurements with the corner of the mouth and where the measurements cross the eyes. Pages five and ten depicted the angle of the ears in relation to the head and pages seven and eleven depicted where the eyes cross. Finally, Anderson explained that pages eight and twelve depicted similar features such as the forehead, the cheekbones and the teeth.

Anderson then submitted into evidence Exhibit B which consisted of the documentation, the DMV records and files for Appellant.<sup>7</sup> The first offered was pages one through six which consisted of the system information – Appellant's driving record and picture - that the DMV possessed for Appellant. Page two consisted of the address history and highlighted one address – 248 Antler's Place, Huntley Glen – which is in reviewing page seven the same address that the DMV has on file

---

<sup>6</sup> See Exhibit A.

<sup>7</sup> See Exhibit B.

for Wusu. Page three depicted the license surrendered by Appellant from Maryland bearing the license number that the DMV has on file for such.

Anderson testified that the remaining documentation consisted of another address history, a Maryland driver's license, paperwork and the completed application. Further, page seven, according to Anderson, is the only documentation that the DMV possesses for Wusu. Anderson testified that page seven consisted of a driver's license surrendered in Virginia and that nothing appeared in the national database when she entered that license number, thus according to Anderson, Virginia did not have anything in the system currently for that license number and that nothing came back for that one.

Anderson testified that the first issue for Appellant was in 1998 when he surrendered his Maryland driver's license and that the Virginia driver's license for Wusu was surrendered in 2000. Anderson further testified that it is the State's contention that Appellant and Wusu are the same individual.

Appellant then asked several questions of Anderson. Appellant stated that when he came to the United States that his name is Gabriel and that he is the same person as Anderson stated but that he went by the name that is his family name here. Further, Appellant stated that when he came to the United States, he changed his name to Wusu and completed the documentation. Thereafter, he went to the court in New Castle, Delaware and officially changed his name back to Gabriel Ansah. Appellant was informed by the court that the name is published in the newspaper for two (2) months and after that time; he obtained a written passport and went to the social security office. After the change of name, he received an American passport. Appellant stated that there is a line in cancer using his former name for Piare and having called Piare, he is officially known as Gabriel and that he just made that. Further, Appellant stated that he is the same person but he changed the name in a court of law in New Castle County, Delaware and that now his passport reflects Gabriel. Appellant stated that he had his social security card that he obtained to match his name.

Appellant stated that he came to the United States in 1985 or 1986 and that he entered Delaware from Maryland. Appellant responded that he established himself in Delaware in 1998 as Gabriel and that he changed his name legally through the Court of Common Pleas in New Castle County. When asked by Anderson why he presented, two years later, a driver's license from Virginia under the name from his home country, Appellant stated that he went to school with that name and converted.

Specially, he stated that he went to school as Gabriel and that he figured that he was identified two different ways so he went to New Castle County and changed the name legally.

Appellant further stated that he came from his home country known as Wusu and that he came to the United States in order to obtain an education. The hearing officer asked Appellant that if he converted his name to Gabriel and developed and established his identity in Delaware in 1998 as Gabriel, why, two years later, did he return to the DMV and obtain a license under the name Wusu. Appellant denied doing so and stated that he had the license bearing Wusu in his possession previously. Anderson then asked questions of Appellant in order to clarify Appellant's response. Appellant stated that when he first came to the United States in 1985 or 1986, he first came to New York City and then went to Virginia. He stated that he entered the United States as Wusu. Further, he did not receive any identification in New York and that he obtained a license as Wusu when he was in Virginia. From Virginia, Appellant relocated to Georgia and obtained a driver's license in Georgia as Wusu.

From Georgia, Appellant relocated to Nebraska and registered for school as Gabriel. Appellant stated that he did not have a license or identification from Nebraska and that he did not show any identification when he registered for school there. When asked with which identification Appellant used to register for school, he stated that "I am being called at home one name." Anderson stated that she understood that that name might be a family name and that a commercial and a legal name might exist to which Appellant agreed.

From Nebraska, Appellant then relocated to Virginia again. From Virginia, Appellant relocated to Maryland in which he obtained a license as Gabriel. After Maryland, Appellant relocated to Delaware and surrendered his Maryland license to the DMV in the 2000s sometime.

When asked again by Anderson that if he established in Delaware in 1998 as Gabriel and surrendered a Maryland license as Gabriel, why did he surrender a Virginia license as Wusu, Appellant stated that he lost his identification and that he was not using it. Further, Appellant stated that once he saw that he possessed two identifications that is when he converted and went to the court to assume the same identity and move forward. Appellant stated that he had already changed his name at the time that he surrendered the Virginia license as Wusu. Appellant stated that he found the identification bearing Wusu on him and he was not using it and that he has not done anything illegal in this country. Further, Appellant stated that since he found the identification, he brought it in to the DMV but that he should have surrendered it.

When asked by the hearing officer, Appellant stated that he has been married for fifteen (15) or seventeen (17) years and that he is not hiding from a woman, the government, debt collectors or any criminal activity. When the hearing officer inquired of Appellant as to why in 2000 when he went to the DMV and surrendered his Virginia license as Wusu, he proceeded to sign a licensing application and obtain a picture under a completely different name, Appellant responded that he never used it to try and persuade or use it for other means. Further, he never presented himself as a double person and that the license was simply in his possession. He stated that he never received anything out of it or did anything with it.

Appellant stated that in 2000, after he had been using the name Gabriel for two years, all of his documents including his passport and social security card were in the name of Wusu so he took them to immigration and was instructed to proceed to court first. However, it was not in immigration court. Appellant stated that he was informed by the court system that there was nothing that they could do until he went to court and prove that he was the same person.

Thus, Appellant was fingerprinted in order for his record to be checked and was instructed to publish the proposed name change in the newspaper for a couple of months. Appellant stated that he took that and the record to New Castle Court. Appellant further stated that he showed the court that he was the same person and that a database was run on him and that he was permitted to change it legally. Appellant stated that he is legally Gabriel Ansah and that he realizes that there are two and that he tried to amend them or fix them but that he just kept them on him.

Appellant presented his United States passport to the hearing officer which was issued August 17, 2007. Appellant did not produce a birth certificate but stated that he was born in Ghana Kumasi. The hearing officer asked why two different dates of birth exist, specifically Gabriel's date of birth listed as January 28, 1964 and Wusu's date of birth listed as February 28, 1963. Appellant responded that his parents told him that they did not know the exact date of his birth as it was never recorded in the hospital and that they only provided him with a year. Further, he stated that his brother informed him of one date and that his family informed him of another date so he was using both dates. Appellant stated that he explained to the court regarding the discrepancy.

Appellant stated that the court instructed him to choose the name that he knew. Appellant further stated that he obtained a birth certificate after he resided in the United States bearing the name Gabriel. Appellant's original birth certificate bore the name Wusu but he did not present that document to the hearing officer.

Appellant stated that he did not graduate from college in Nebraska and that he resided in Virginia for employment. Further, when he went to Georgia for a second time, he was known as Gabriel. Appellant further stated that he resided in Maryland for employment and was known as Gabriel.

## **II. Discussion**

In summation, Anderson stated that it is the duty of the DMV to confirm the identity of all persons who receive driver's licenses or identification cards. This duty is performed through a



variety of resources, one of which is the facial recognition software. Further, driving is a privilege and that privilege is represented by the driver's license issued by the DMV. The DMV must suspend driving privileges if it determines that an individual misrepresented themselves in order to obtain a license or identification card. It is the DMV's position that Gabriel Ansah misrepresented himself, as shown through the investigation of records, and that his license should be suspended for one (1) year pursuant to Title 21, Section 2733 (a)(5)(E).

The hearing officer then stated to Appellant that the State recommends that, because of fraudulent activity, that his license should be suspended per Title 21, Section 2733(a)(5)E).

In summation, Appellant stated that he did not misrepresent himself and that it has been two years since he came here, has occupied and was using his identity. Further, because of his culture, he is called a different person. Appellant stated that he attended the school system here as the same person. When he realized the discrepancy, he rectified it by going to court and amending it. Appellant stated that he did not try to mislead the DMV or any other governmental authority and that he did not use identities to do any fraudulent activity in America. Appellant stated that he was never involved in any gang or bad behavior since he has been in the United States.

Appellant stated that his record can be checked and that he has never done anything illegal in this country including using identities to misrepresent himself or to fake his identity. Appellant affirmed that he did use the identification to mislead and that it was quite unfortunate that, due to his culture, he had two identities. However, Appellant stated that when he saw this situation, he rectified it by going to court and proving his identity and combining the two identities into one person. Appellant stated that he did not have a former way and that he thought when he went to court that the DMV would be notified. He was unaware that he would have to present at the DMV and inform them of the situation.

Further, Appellant stated that he went to the Social Security Office as well as to court and informed both of his situations. Appellant was instructed to do what is legal to do and he believed

that to be enough. Appellant stated that he did not mean to use the different name in another way and that his point is proven that he was not misleading the DMV or any governmental authority. Finally, Appellant argued that he did not think that his license should be suspended.

### **III. Standard of Review**

The standard of review of an appeal from an administrative decision of the DMV is on the record, and, as such, is limited to correcting errors of law and determining whether substantial evidence exists to support the hearing officer's factual findings and conclusions of law.<sup>8</sup> Therefore, the decision will stand unless the Court finds the hearing officer's findings are not supported by substantial evidence in the record or are "not the product of an orderly and logical deductive process."<sup>9</sup>

If substantial evidence exists in the record below, this Court "may not re-weigh and substitute its own judgment for that of the Division of Motor Vehicles."<sup>10</sup> However, "when the facts have been established, the hearing officer's evaluation of their legal significance may be scrutinized upon appeal."<sup>11</sup> However, "the Division's understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and the probative value of real evidence."<sup>12</sup>

### **IV. Issues Pending Before the Court**

In this appeal, Appellant advances two arguments: 1) Appellant was denied due process because when he was accused of fraud, he was not advised of when or how the fraud was allegedly committed and that his due process rights were violated by the delay between the time that the alleged fraud was committed and the time that his license was suspended; and 2) The DMV failed to

---

<sup>8</sup> *Lundin v. Cohan*, 2009 WL 188001 at \*2 (Del. Com. Pl. Jan. 28, 2009) citing *Shahan v. Landing*, 632 A.2d 1357 (Del. 1994); *See also Howard v. Voshell*, 621 A.2d 804 (Del. 1992); *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991).

<sup>9</sup> *Lundin* at \*2 citing *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. Super. Ct. 1985).

<sup>10</sup> *Wayne v. Division of Motor Vehicles*, 2004 WL 326926 at \*1 (Del. Com. Pl. Jan. 22, 2004) citing *Barnett v. Division of Motor Vehicles*, 514 A.2d 1145 (Del. Super. Ct. 1986); *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. Ct. 1976).

<sup>11</sup> *Voshell v. Addix*, 574 A.2d 264 (Table) (Del. 1990); 1990 WL 40028 at \*2 (Del.).

<sup>12</sup> *Id.*

comply with 21 *Del. C.* § 2733(a) by failing to immediately suspend Appellant's license when they first discovered good cause to believe that he had committed fraud. The Court will address each argument in turn.

a) **Denial of Due Process**

Appellant states that he is a native of Ghana and that he was known by two names when he lived in Ghana. His name given at birth was Gabriel Owusu Ansah and he was also known by his family name of Papa Yaw Wusu.

Prior to arriving at the hearing, Appellant had only been advised that the DMV had reason to believe that he may have fraudulently obtained one or more DLs/IDs. Appellant argues that the allegation is merely a restatement of 21 *Del. C.* § 2751(a) and that it does not specify a time frame for when the alleged fraudulent occurred or how it occurred. Further, Appellant states that when the hearing started, the hearing officer advised Appellant that she could suspend his license merely on a showing that the DMV has reason to believe that he may have fraudulently obtained one or more DLs/IDs and that the hearing officer defined the scope of the hearing to be as follows: Whether the DMV had cause to believe the defendant misrepresented his/her identity by presenting fraudulent documents, using a fictitious/false name, making a false statement, concealing a material fact and/or otherwise committing fraud.

Appellant argues that it was not until he heard the testimony of Anderson, the DMV investigator that he learned that he was under investigation for obtaining a license ten years ago under the name Wusu. Further, based upon the transcript of the hearing, it appears that the DMV was concerned that Appellant obtained a license in 1998 under the name Gabriel Ansah and in 2000 under the name Wusu. Appellant states that Anderson introduced a driver's license permit application dated January 28, 2003 signed by Appellant in which Appellant advised that the information contained in his application was correct.

Appellant argues that it does not appear from the transcript that Anderson introduced into evidence any similar application for Wusu from 2000 or any other applications in the name of Appellant. Appellant contends that the DMV's failure to provide adequate notice of the alleged fraudulent actions of Appellant was therefore compounded by their failure to present evidence that he made an application in any other name, or that he certified any other information to be true and correct.

Appellant argues that the due process that he was entitled to, but denied, should have been along the lines as licensees who face suspension under 21 *Del. C.* Chapter 28. In petitions filed with the Court by the Attorney General on behalf of the DMV, the licensee is given notice of predicate convictions on which the State relies upon to justify suspension of the licensee as a habitual offender in order to request a court order. The licensee in those proceedings is provided with the actual allegations against him as well as time to prepare a defense. Appellant argues that it would not have been that much more difficult for the DMV to inform him of the time frame in which they believed he applied for a license using a false name but rather the DMV resorted to a boilerplate form that did nothing more than inform the licensee that the DMV intended to suspend his license.

**b) Case Law on Appellant's Due Process Rights.**

Courts have consistently held that suspension of a driver's license is a civil proceeding as opposed to a criminal hearing.<sup>13</sup> As an administrative hearing is a civil proceeding as opposed to a criminal proceeding, there is no right to an attorney. However, the licensee is entitled to a fair hearing.<sup>14</sup> A licensee who is faced with suspension of his driver's license is entitled to a due process

---

<sup>13</sup> *State v. Kamalsi*, 429 A.2d 1315, 1318-19 (Del. Super. Ct. 1981).

<sup>14</sup> *In re Sweeney*, 257 A.2d 764 (Del. Super. Ct. 1969).

hearing<sup>15</sup> and the hearing must be meaningful.<sup>16</sup> At the same time, a suspension or revocation hearing need not have all the procedures and formalities of a court action in order to meet the requirements of due process.<sup>17</sup> Further, it is required that hearings be recorded and transcribed to ensure that due process has been afforded.<sup>18</sup>

If the Legislature intended the notice and provisions for license suspensions based upon fraud to be the same as those for suspension/revocation as a habitual offender, then the statutes and procedures would be identical in nature but they are not.

**c) Notice and Opportunity to be Heard**

For the DMV to suspend the license of an individual based upon fraud, minimum notice and the opportunity for a hearing are all that are required. The DMV provided notice and an opportunity for a hearing to Appellant. The notice dated February 1, 2010 provided by the DMV to Appellant stated that the DMV had reviewed its digital photograph database for the purpose of eliminating errors that may have occurred during past DLs/IDs transactions and to look for an indication that certain DLs/IDs may have been obtained fraudulently. Additionally, the notice stated that a recent review of Appellant's record by the DMV indicated that more than one Delaware DLs/IDs were assigned to him and that as a result of further investigation, the DMV has reason to believe that he may have fraudulently obtained one or more DLs/IDs. The notice provided Appellant with the reason for which the DMV sought to suspend Appellant's DL/ID. Further, the notice gave Appellant the opportunity for an administrative hearing to contest the DMV's initial determination and also provided Appellant with the name of a DMV employee and a telephone number in which to contact that individual if he had any questions or concerns.

Appellant then requested a hearing in writing and noted in his writing to the DMV that the DMV was alleging that he had multiple DLs/IDs. Appellant acknowledged in the writing the very

---

<sup>15</sup> *Kamalsi*, 429 A.2d 1315.

<sup>16</sup> *Bell v. Burson*, 402 U.S. 535 (1969).

<sup>17</sup> *Sweeney*, 257 A.2d 764.

<sup>18</sup> *Husbands v. Shahan*, 2002 WL 561010 (Del. Super. Ct. Feb. 27, 2002).

basis for which the DMV sought to suspend his DL/ID. At the hearing, a DMV employee testified regarding their investigation. Appellant fully testified at the hearing about the circumstances regarding his obtaining two Delaware licenses under two different names. Appellant testified at the hearing and presented evidence.

Appellant further admitted during the hearing that Gabriel Ansah and Wusu are the same person but attempted to explain the situation away.

The February 1, 2010 notice provided to Appellant by the DMV complied with the minimal requirements of due process under the Delaware<sup>19</sup> and United States Constitutions. The notice apprised Appellant that the DMV had reason to believe that he held more than one Delaware DLs/IDs and that one or more of those may have been fraudulently obtained.

The notice provided to Appellant with an opportunity for a hearing which Appellant availed himself of and provided testimony and evidence disputing the contentions of the DMV was sufficient and therefore, this Court does not find that Appellant's due process rights were violated.

**d) Alleged Failure to Comply with 21 Del. C. § 2733(a)**

Appellant states that 21 *Del. C.* § 2751(a), mentioned by Anderson as the basis for the DMV's investigation, is a criminal statute that prohibits a person from fraudulently obtaining a driver's license or identification card by misrepresentation and constitutes a class B misdemeanor. Further, Appellant states that in order to be convicted of this crime, the State must prove its case against a defendant by proof beyond a reasonable doubt. A defendant charged with violating 21 *Del. C.* § 2751(a) is entitled to counsel and can elect to have the case heard by a jury.

In addition to the criminal punishment which may be imposed upon a defendant who is convicted of violating 21 *Del. C.* § 2751(a) which includes up to six months imprisonment, a fine of

---

<sup>19</sup> 21 *Del. C.* § 2733(b) sets forth the minimum due process requirements for the suspension and hearing process for licensees. 21 *Del. C.* § 2733(b) states: "Whenever the Department suspends the license of any person for any reason set forth in subsection (a) of this section, the Department shall immediately notify the licensee and afford the licensee an opportunity of a hearing before the Department in the county wherein the licensee resides. Upon such hearing the Department shall either rescind its order of suspension or, good cause appearing therefor, may suspend the license of such person for a further period or revoke the license."

up to \$1,150.00 and a license suspension of up to six months, a defendant may also have his license suspended for up to one year pursuant to 21 *Del. C.* § 2733(a)(5) if the DMV has reason to believe that the defendant violated 21 *Del. C.* § 2751(a). Appellant states that he has never been charged with violating 21 *Del. C.* § 2751(a) and that has never been convicted of such.

Appellant argues that 21 *Del. C.* § 2733(a) requires that the DMV immediately suspend a license when they have cause to believe that the license holder has committed fraud in obtaining a license or identification card. Upon learning of the license suspension, the licensee can then request a hearing to contest the suspension. Appellant further argues that it has been held that 21 *Del. C.* § 2733(a) allows for the immediate revocation of a license when the DMV has reason to believe that a driver is a menace to society and that the statute provides on an emergency basis a remedy to the public. Appellant argues that in the instant case, in a letter dated February 1, 2010, the DMV advised Appellant that they were going to suspend his license on February 17, 2010 unless he requested a hearing prior to that time and that the DMV lacked the statutory authority to follow such procedure.

Appellant cites to *Stong v. Voshell*<sup>20</sup> to state that that case involved a license suspension under 21 *Del. C.* § 2733(a)(2) to which the Superior Court reversed a license suspension because the DMV erred in two ways: 1) the DMV lacked any statutory authority to follow the procedure that it did: to first provide a notice and hearing and then to revoke the license; and 2) since the DMV did not follow 21 *Del. C.* 2733(a)(2) as it should have and since the statute did not apply to the situation at hand [a non-emergency], the Court reversed the DMV's decision revoking appellant's license.

Individuals who fraudulently obtain Delaware driver's licenses from the DMV face a potential consequence of criminal prosecution, or civil suspension of the driver's license or both. In this instance, Appellant faced a civil suspension of his driver's license. Though the Appellant correctly cites to the criminal statute and the consequences of such violation for an individual

---

<sup>20</sup> *Stong v. Voshell*, 1995 WL 156260 (Del. Super. Ct Feb. 27, 1995).

obtaining a driver's license through misrepresentation, Appellant is not charged with a violation of the criminal statute. Appellant has been alleged of a civil violation of 21 *Del. C.* § 2751(a). Civil violations of 21 *Del. C.* § 2751(a) are handled by the DMV directly and not through a criminal proceeding. The DMV exercises their discretion pursuant to 21 *Del. C.* § 2733(a). These civil proceedings include the potential of a longer term of a driver's license suspension under 21 *Del. C.* § 2733 than is available to the Court in a criminal proceeding.

The DMV first discovered potential fraud related to Appellant's license as a result of a general record review conducted during 2009. The DMV sent the February 1, 2010 notice to Appellant, informing him that his license would be suspended on February 17, 2010 unless he requested a hearing prior to that date. Appellant did exactly that.

The request for a hearing acted as a stay upon the suspension, unless and until the time in which the hearing officer rendered a decision in the matter which was issued on April 9, 2010.

e) **Was the Administrative Hearing Fair?**

The process afforded to Appellant – notice and an opportunity for a hearing – was fair. The DMV received notice of the potential fraud of Appellant when it conducted its own record review through the assistance of facial recognition software which provided an indication that fraud may have occurred.

Twenty-one *Del. C.* § 2733(a) does not necessarily require that the DMV immediately suspend a license when they have cause to believe that the license holder has committed fraud in obtaining the driver's license. Twenty-one *Del. C.* § 2733(a) specifically states that the DMV “may” immediately suspend a license for fraud. The statute does not command the immediate suspension of a driver's license, specifically if it did, the statute would read a mandatory “must” instead of the discretionary “may.” The Court does not agree with Appellant's position that the DMV was required to immediately suspend Appellant's driver's license upon discovery of the alleged fraud.



The situation presented by this matter was that the DMV issued notice to Appellant on February 1, 2010 that they would suspend his driver's license effective February 17, 2010 unless he requested a hearing prior to February 16, 2010. Appellant requested said hearing on February 8, 2010. Thus, Appellant's request for a hearing in order to contest the matter effectively stayed the suspension of his driver's license until the time that the hearing officer rendered a decision in the matter.

Further, the case cited by Appellant, *Stong v. Voshell*<sup>21</sup> is inapposite to the instant matter. Though *Stong* involves 21 *Del. C.* § 2733, it specifically dealt with 21 *Del. C.* § 2733(a)(2), not the provision at issue in the instant matter which is 21 *Del. C.* § 2733 (a)(5). In *Stong*, appellant was previously charged with inattentive driving for a motor vehicle accident that occurred in April 1993. Seven days after the accident, the victim died as a result of the injuries sustained in the accident. In August 1993, the appellant pled guilty to inattentive driving. The State Police did not notify the DMV of the connection between the victim's death and appellant's inattentive driving that caused the victim's injuries and resultant death until March 1994, nearly one year after the accident had occurred. In March 1994, the DMV began the suspension proceeding of appellant's driver's license under 21 *Del. C.* §2733. On appeal, the Superior Court held that appellant was prejudiced by the length of time that had elapsed between his conviction for inattentive driving and the civil suspension proceedings.

The Court specifically relied upon 21 *Del. C.* §2733(a)(2)<sup>22</sup> and determined that that provision, in *Stong's* case, was intended to address an emergency situation when the DMV has reason to believe that a driver is a menace to society. Thus, immediate suspension of *Stong's* driver's license would serve to protect the public. Further, the Court stated that the statute "does not

---

<sup>21</sup> *Stong Voshell*, 1995 WL 156260 (Del. Super. Ct. Feb. 27, 1995).

<sup>22</sup> 21 *Del. C.* § 2733(a)(2) states: "The Department may immediately suspend the license and driving privileges or both of any person without hearing and without receiving a record of conviction of such person of crime whenever the Department has reason to believe that such person has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage."

allow for a hearing and then the suspension or revocation of a license once the Division learns a moving violation may have caused a death. It provides only for an immediate suspension and then a hearing, with possible further suspension or revocation.”<sup>23</sup>

Thus, immediate suspension of a driver’s license is necessary in cases where the driver is a menace to society, i.e., where the driver has committed a moving violation that may have caused a death. *Stong* does not mention or even suggest that the aforementioned principle is applicable to cases involving fraud. The Court stated that the time to have suspended Stong’s driver’s license in order to protect the public was at or about the time of the accident and death, not almost one year later. The policy considerations addressed by the Court in *Stong* are not the situation that is present before this Court, thus *Stong* is inapposite to the matter at hand.

The DMV, in the current matter, conducted a general record review which indicated potential problems with Appellant’s driver’s license. The DMV then conducted an investigation into the matter and discovered that Appellant may have committed fraud. The DMV issued notice to the Appellant and provided an opportunity for a hearing. Appellant requested a hearing. Had Appellant not requested a hearing in order to contest the matter, then the DMV would have suspended Appellant’s driver’s license on February 17, 2010. This Court finds that the DMV did not act unreasonably or allow a great length of time to elapse before it took steps to suspend Appellant’s license. The time in which for the DMV to act to suspend Appellant’s license was when the DMV first discovered the problem. The DMV acted timely when the problem was discovered.

This Court finds that the DMV did not lack statutory authority to suspend Appellant’s driver’s license and was not required to impose an immediate suspension of such license under the circumstances. Due process requires notice and an opportunity for a hearing and Appellant received just that before the suspension of his license.

---

<sup>23</sup> *Stong v. Voshell*, 1995 WL 156260 at \*3 (Del. Super. Ct. Feb. 27, 1995).

**f) The Division of Motor Vehicle's Findings**

The hearing officer found that Appellant fraudulently misrepresented his identity based upon the following: 1) the facial recognition software used by the DMV clearly indicates through comparison of facial features that Appellant did receive a driver's license with the name Gabriel Ansah in 1998 and a driver's license with the name of Papa Wusu in 2000; 2) the appellant stated that he legally changed his name in the New Castle County Court of Common Pleas to Gabriel Ansah in 2005; 3) it appears that Appellant has a pattern of using both of his identities as verified by obtaining a Maryland driver's license in the name of Gabriel Ansah and a Virginia driver's license in the name of Papa Wusu and both of those driver's licenses were surrendered to the Delaware DMV; 4) Appellant obtained two licenses from the DMV – one with the name Gabriel Ansah and the other in the name of Papa Wusu; 5) records indicate that there are two social security numbers – one issued to each name; 6) it is clear that there is a pattern and it clear that the Delaware DMV is uncertain as to the true identity of the Appellant; 7) Appellant had no explanation for the fact that he first obtained a license as Ansah and two years later obtained a license as Wusu; 8) Appellant produced a United States passport in the name of Ansah that was issued in 2007; and 9) at the time of Appellant's application for a license as Wusu, he held a Delaware license as well as licenses in Virginia and Maryland.

The hearing officer concluded that Appellant committed fraud when he made a false statement when asked if he was licensed in Delaware or any other state. Further, the hearing officer concluded that that Wusu's licenses be cancelled and Appellant be required to provide the appropriate documents to the Social Security Administration. The hearing officer suspended Appellant's license for twelve (12) months.

This Court is required to review the administrative decision of the DMV to: 1) correct errors of law and 2) determine whether substantial evidence of record exists to support the findings of fact and conclusions of law. This Court is unable to re-weigh the evidence presented at the hearing and

substitute its own decision for that of the hearing officer. “Substantial” means “such evidence of sufficient as a reasonable mind might accept as adequate to support the conclusion.”<sup>24</sup> This Court provides deference to the decision of the hearing officer because the hearing officer is in the best position to weigh the evidence presented and the testimony given. The Court finds that the hearing officer possessed substantial evidence in which to reach the conclusion that Appellant committed fraud.

## **V. Conclusion**

The facts in the record are sufficient to support the hearing officer’s conclusion that Appellant committed fraud under 21 *Del. C.* § 2751(a). Consequently, the Court concludes that the hearing officer’s decision suspending Appellant’s license was not a violation of Appellant’s due process and is supported by substantial evidence and applicable law and is hereby **AFFIRMED**.

**IT IS SO ORDERED** this 29<sup>th</sup> day of March 2011.

/s/ John K. Welch

John K. Welch  
Judge

/jb

cc: Ms. Tamu White, Chief Case Manager  
Civil Division, CCP

---

<sup>24</sup> *Tulou v. Raytheon Service Co.*, 659 A.2d 796, 802 (Del. Super. Ct. 1995) (citations omitted).